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No. 94-2038

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

WILLIAM FLEMING, et al.,
Petitioner,

vs.

GREATER ST. LOUIS AREA MAJOR CASE SQUAD; CITY OF DELLWOOD, MISSOURI; CITY OF JENNINGS, MISSOURI; CITY OF FLORISSANT, MISSOURI; DAN CHAPMAN; ROBERT LOWERY; HARRY SLATEN; MICHAEL YARBOROUGH; AND DENNIS CORDIA
Respondents.

BRIEF IN OPPOSITION OF RESPONDENTS SLATEN, YARBOROUGH AND CITY OF JENNINGS

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BRIEF IN OPPOSITION OF RESPONDENTS SLATEN, YARBOROUGH AND CITY OF JENNINGS

This Brief in Opposition is filed on behalf of Defendants Slaten, Yarborough, and the City of Jennings. The purpose of this Brief will be to focus on the reasons, related to these Defendants, that the Petition for Writ of Certiorari should be denied.

Rule 14

It should be noted that Petitioner has included in the Appendix the opinion of the Eighth Circuit Court of Appeals and the Order of the District Court which granted summary judgment to Defendant Chapman. However, the Orders of the District Court granting Summary Judgment to the other Defendants, including these Defendants, have not been provided. It appears that Rule

14 (k) (ii) contemplates that rulings by the District Court which were affirmed on appeal should be provided so that this Court, in its review, can understand why the District Court ruled as it did and why the Court of Appeals affirmed. The Petition does not comply with this requirement.

THE FACTS

The Petition for a Writ of Certiorari filed with this Court recites facts which are clearly incomplete. Petitioner points out that Plaintiff was black, that he was arrested and charged with murder of a police of ficer, and that he was later released, and it also points out that two other men were ultimately charged and convicted of the crime. However, Petitioner does not provide the Court with the underlying facts from which the Court could make any judgment that the claims asserted against these Defendants have any valid basis. For example, Petitioner ignores evidence that was presented to the District Court by these Defendants in connection with their Motions for Summary Judgment showing their non involvement in the securing of witnesses and presentation of evidence to the Grand Jury which resulted in Petitioner's incarceration. It also ignores the fact that Petitioner, although he had ample time to have gathered evidence, failed to present any competent evidence by affidavits or otherwise which would have provided any proper basis for denial of the Motions for Summary Judgment by the District Court. Thus, fair consideration of what occurred in the District Court shows that there was evidence indicating that there was no basis for liability of these Defendants and no competent evidence to the contrary.

While it does not involve these Defendants, we note that Petitioner complains, in connection with the granting of Summary Judgment to Defendant Chapman, that the District Court invited Defendant Chapman to submit material supporting his position and Petitioner then asserts that the District Court ruled

on Defendant Chapman's motion before Petitioner had an opportunity to respond to the material submitted by Defendant Chapman. As far as we have been able to determine, no request was made to the District Court to set aside the ruling and to give Petitioner an opportunity to submit any material in opposition to what Defendant Chapman gave the District Court. Without this kind of request to the Court below, it does not appear that anything was preserved for appeal.

In any event because, with respect to these Defendants, Petitioner failed to present to the District Court facts showing why these Defendants should be liable to Petitioner, the District Court and the Court of Appeals were clearly correct in holding that these Defendants were entitled to Summary Judgment.

The Opinion of the Court of Appeals makes clear the lack of evidence against these Defendants. It points out that Defendant Yarborough merely was called to the scene, asked for assistance and directed the initial search of the area and then wrote a report. As to Defendant Slaten, the opinion of the Court of Appeals shows that the argued basis for Petitioner's claim against him was that he contacted the Major Case Squad in St. Louis to request that it take over the investigation ofthe murder of Sgt. Keller. The Court of Appeals' Opinion points that it was the officer selected by the Major Case Squad who directed the investigation which resulted in evidence which was presented to a Grand Jury, not Defendant Slaten. Petitioner's incarceration, of course, took place because of the determination by the Grand Jury that there was a valid basis for taking action against Petitioner. Finally, with respect to the City of Jennings, the Court of Appeals affirmed the District Court in its ruling that the City had filed the affidavit of its Mayor which showed that there was no policy on the part ofthe City authorizing or permitting the kind of conduct Petitioner complained about in his complaint and that Petitioner had failed to file in opposition to the City's affidavit, any proper affidavits or other competent evidence to support the allegations

of unconstitutional policies and therefore had failed to show that an issue of material fact existed as to the liability of the City of Jennings.

DISCUSSION

While Petitioner's Brief makes very serious accusations about a conspiracy against the black race and improper police conduct in the securing of evidence against the Petitioner, the proceedings below presented showed clearly that Petitioner did not have competent or relevant evidence to support those grave accusations. It is, of course, certainly most unfortunate that Petitioner was incarcerated, but the uncontroverted fact is that his confinement followed an indictment by a Grand Jury and was based on evidence that the Grand Jury felt was worthy of belief. There is nothing in what Petitioner has presented, other than unsupported rhetoric and speculation, to support the notion that anyone acted improperly in obtaining or presenting the evidence that the Grand Jury heard.

More important with respect to these Defendants, there is no evidence whatever that any act of Defendants Yarborough, Slaten, or the City of Jennings, caused the production of improper evidence. Thus, even if it is assumed that someone did act improperly, there is no evidence relating such improper acts to these Defendants.

The evidence shows, without dispute, that Defendant Yarborough had nothing at all to do with the Petitioner, William Fleming. His sole involvement was the investigation at the scene of the murder and the preparation of the initial report of investigation. Defendant Slaten's act on which Petitioner focuses was the calling in of the Major Case Squad, which is standard procedure in St. Louis in this serious kind of crime. Petitioner never presented any evidence that the calling in of the Major Case Squad was, in fact, improper in any way, or a valid basis for

the imposing of liability on Defendant Slaten. Finally, the case against the City of Jennings rested on nothing but unsupported speculation. The Mayor of the City stated clearly in his affidavit that the City does not authorize the kind of policies that Petitioner asserts in the complaint, and Petitioner did not present any proper and relevant evidence to show otherwise.

It is important to note the substantial length of time that this suit was on file before the Motions for Summary Judgment were filed. The situation was one where Petitioner had ample time to obtain and produce evidence to support the charges of wrongdoing on the part of these Defendants, as well as other Defendants in the case, but Petitioner failed to present such evidence to the District Court. He presented neither affidavits nor depositions to support his claim that the Major Case Squad caused tainted evidence to be presented in order to obtain an indictment.

CONCLUSION

Under the circumstances in this record, the District Court was clearly correct in sustaining the Motions for Summary Judgment filed by these Defendants, and there is no proper reason that these Defendants should be put to the substantial expense involved in presenting the matter before this Court.

Respectfully submitted,
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CERTIFICATE OF SERVICE

Comes now Counsel for Respondents Slaten, Yarborough and City of Jennings and hereby certifies that three (3) copies of their brief have been mailed on this 7th day of July, 1995, to: Mr. Helton Reed Jr., Attorney for Plaintiff 2616 N. Kingshighway, St. Louis, Missouri 63113; Mr. Henry D. Menghini, Attorney for Defendants City of Florissant, Robert Lowery and Dennis Cordia, 200 North Broadway, Suite 1200, St. Louis, Missouri 63102; and Mr. John G. Enright, Attorney for Defendants City of Dellwood and Dan Chapman, 1015 Locust, Suite 500, St. Louis, Missouri 63101.

/s/ F. Douglas O'Leary
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